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No. 400

In the Supreme Court of the United States

OCTOBER TERM, 1946

NORTHERN PACIFIC RAILWAY COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 7–18) is reported in 64 F. Supp. 1. The opinion of the Circuit Court of Appeals (R. 43–48) is reported in 156 F. 2d 346.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 8, 1946 (R. 49). The petition for a writ of certiorari was filed on August 14, 1946, and was granted on October 14, 1946 (R. 49). The jurisdiction of this Court rests upon Section

240 (*a*) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the following items of Government-owned property, shipped on Government bills of lading over petitioner's railroad in 1941, 1942, and 1943, constituted "military or naval property of the United States moving for military or naval and not for civil use" within Section 321 (a) of the Transportation Act of 1940, and were therefore entitled to move at land-grant reduced rates:

(a) copper cable paid for by the Navy Department and shipped for construction of Navy specified degaussing equipment (to neutralize magnetic mines) for a Maritime Commission cargo vessel.

(b) lumber for construction of a War Department owned ammunition plant.

(c) lumber for construction of Marine Corps military bridges.

(d) bowling alley equipment intended for recreation of civilian personnel erecting a naval base at Dutch Harbor, Alaska, and later for military and naval personnel stationed there, and actually used only by military and naval personnel.

(e) liquid paving asphalt for the construction of runways at a Civil Aeronautics Administration airport at Cold Bay, Alaska, intended to be used and actually used by military and naval planes in the defense of the territory against Japanese attack.

STATUTE INVOLVED

The relevant portions of the Transportation Act of 1940, 54 Stat. 898, 954, 49 U. S. C. 65 (a), are set forth in the Appendix, pp. 48–50.

STATEMENT

The parties entered into a stipulation of facts which was adopted by the District Court as its findings of fact (R. 8, 18, 43). The agreed facts are as follows:

The shipments in controversy, five in number, were transported over petitioner's railroad on Government bills of ladings in 1941, 1942, and 1943, and were admittedly Government property at the time of carriage (Pet. 7). Petitioner, denying that the property consisted of "military or naval property * * * moving for military or naval and not for civil use," submitted its bills to the Government at the published commercial tariff rates (R. 19). However, the United States claimed that each shipment was entitled to move at land-grant rates, under Section 321 (a) of the Transportation Act of 1940, and in each case deducted the difference between the commercial rates and the reduced land-grant rates, in some instances from payments of the original bills and, in others, from payment of subsequent bills (as Section 322 of the Transportation Act, Appendix pp. 49–50, expressly permits) (R. 19–20). Petitioner thereupon brought this action under the Tucker Act to

recover the deducted sums (R. 19). The amount claimed on these disputed shipments was $3,569.75 (R. 8, 18, 45).[1]

Petitioner's predecessor was granted public lands on condition that its road "shall be a post route and a military road, subject to the use of the United States, for postal, military, naval, and all other government service, and also subject to such regulations as congress may impose restricting the charges for such government transportation." Section 11, Act of July 2, 1864, 13 Stat. 365, 370, c. 217, 38th Cong., 1st Sess. (R. 21).[2] The Army Appropriation Act of June 7, 1924, 43 Stat. 477, 486, 10 U. S. C. 1375, provided that land-grant rates shall be "such rates as the Secretary of War shall deem just and reasonable and shall not ex-

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[1] Petitioner initially brought suit on seven separate shipments for which it had been paid land-grant rates. In the course of the hearing in the District Court, petitioner withdrew one of these claims (R. 2, 8, 17, 22), and the Government admitted liability for the full commercial tariff on another claim (R. 1–2, 8, 17, 23).

[2] Section 20 of the Act of July 2, 1864, 13 Stat. 365, 372, provided as follows:

"That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure the government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, congress may, at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter, amend, or repeal this act."

ceed 50 per centum of the full amount of compensation, computed on the basis of the tariff or lower special rates for like transportation performed for the public at large" (R. 22). Section 321 of the Transportation Act of 1940, *infra*, pp. 48–49, provided that henceforth the "full applicable commercial rates, fares, or charges" should be paid for carriage of all Government goods except for the "transportation of military or naval property of the United States moving for military or naval and not for civil use," upon condition that the land-grant railroads should file releases with the Secretary of the Interior of any claims against the United States to additional unpatented lands or compensation therefor (R. 22). Petitioner, and the other carriers concerned, duly filed the required releases under Section 321 (b), prior to the performance of the transportation services in question, and petitioner's releases were approved by the Secretary of the Interior on April 16, 1941 (R. 22–23).[3]

[3] At that time, the petitioner and the Government were engaged in litigation concerning petitioner's claims to public lands under its original land-grant acts. By the decision of this Court in *United States* v. *Northern Pacific Railway Company*, 311 U. S. 317, decided December 16, 1940, it was adjudged that the petitioner was entitled to patents to 428,986.68 acres, carried in the petitioner's inventory at a value of approximately $1,400,000. The petitioner's claim for compensation for expropriated lands, amounting to a total of 1,453,061.02 acres claimed by petitioner to be worth $14,468,649.06, was remanded by this Court to the District Court for the trial of various issues going to the quantum of

The pertinent facts concerning the five shipments involved in this case are as follows:

1. *Copper cable for degaussing equipment.*—In August 1941, an inspector of naval material consigned 15,780 pounds of insulated copper cable from Pawtucket, Rhode Island, to the District Material Officer, Thirteenth Naval District, c/o Seattle-Tacoma Shipbuilding Company. This cable was furnished and transported by petitioner for the Navy for use in the installation of degaussing equipment (to neutralize magnetic mines) on Hull No. 123, a cargo vessel being built by the Shipbuilding Company under contract with the Maritime Commission, entered into on October 9, 1939. Pursuant to Section 501 (b) of the Merchant Marine Act of 1936, as amended (46 U. S. C. 1151 (b)), the plans and specifications for the vessel had been submitted to the Navy Department for suggested changes making it suitable for conversion into a military or naval auxiliary or for use by the United States in time of war. In 1940,

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the award, the value of the land, and the Government's claim for damages for breach of agreement by the railroad. In its release under Section 321 (b), petitioner included all of its claims, except that portion of the 428,986.68 acres previously sold by it to bona fide purchasers. The parties to that suit thereupon stipulated for settlement of the controversy by mutual relinquishment of all claims, and payment by the petitioner of $300,000 to the United States. On the basis of this stipulation, the District Court entered a decree dismissing the suit. R. 23; *United States* v. *Northern Pac. Ry. Co.*, 41 F. Supp. 273 (E. D. Wash.); S. Doc. No. 48, 77th Cong., 1st Sess. (reprinted in 41 F. Supp. at 284).

while the ship was under construction, the Navy Department and the Maritime Commission agreed that all Maritime Commission ships should have degaussing equipment. The degaussing specifications were to be prepared by the Navy, which was also to furnish all equipment and bear its cost and the cost of transportation. During installation, the Navy Department would act in an advisory capacity. The Maritime Commission was to make all necessary arrangements with its contractor. In accordance with this general plan, the degaussing equipment for Hull No. 123, including the copper cable in question, was furnished and paid for by the Navy. The Navy also paid for the transportation of all equipment.

The Maritime Commission contract for the sale of the ship provided that during the emergency declared on September 8, 1939, the vessel was to operate as directed by the Maritime Commission; and from the time of its delivery in September 1941, it was operated as directed by the Maritime Commission or the War Shipping Administration (R. 8–10, 24–25, 43–44).

2. *Lumber for construction of munitions plant.*— In January and February 1942, petitioner transported from the State of Washington to New Brighton, Minnesota, seven carloads of lumber, shipped by various lumber companies, consigned to the U. S. Area Engineer, Twin Cities Ordnance Plant, in care of Foley Brothers, Inc. and Wal-

bridge, Aldinger Company, for use by these contractors in the construction of Twin Cities Ordnance Plant. This Plant was a Government-owned, War Department sponsored, factory for the manufacture of .30 and .50 caliber ammunition. It was to be operated on behalf of the Government, by Federal Cartridge Corporation, with whom the War Department, in July 1941, had entered into a cost-plus-fixed-fee construction and operation contract. Foley Bros. and Walbridge, Aldinger Company, as a joint venture, were subcontractors for construction. The Government furnished the site, was at all times the owner of the entire facility, and supervised all construction through the Army's Quartermaster Corps and the Corps of Engineers. The Office, Chief of Engineers, acted as a central procuring agency for lumber used in the construction of the Plant and issued allocations for the purchase of the lumber here involved. After completion in January 1943, the Plant was engaged in manufacturing small caliber ammunition for the use of the armed forces of the United States (R. 11–13, 26–28, 44).

3. *Lumber for construction of Marine Corps pontons.*—In May 1943, petitioner carried 113,120 pounds of fir lumber shipped by a lumber company from the state of Washington to Minnesota, consigned to Depot Quartermaster Aaron Carlson, care Crown Iron Works, at Minneapolis, Minnesota, for United States Marine Corps. The lumber was to

be treated, kiln dried, milled, and manufactured, at the Crown Iron Works, into trestle balks and ponton balks, sills, and chess, all of which are necessary parts of certain types of demountable floating bridges required to move military personnel and war vehicles across water barriers. The balks manufactured from the fir lumber involved here were either shipped overseas in connection with military or naval operations, or were used in the construction of bridges or piers, at Marine Corps camps, for the training of combat engineers (R. 13–14, 29, 44).

4. *Bowling alleys for Dutch Harbor.*—In February 1942, an Inspector of Naval Material shipped, over petitioner's and connecting carriers' roads, 29,037 pounds of bowling alley equipment from Michigan, to Seattle, Washington, consigned to the Officer in Charge, Siems-Drake Puget Sound Company, for reshipment to Naval Air Base, Dutch Harbor, Alaska, Contract NOy 3570. That contract originally covered the construction of Naval Air Bases at Kodiak and Sitka, Alaska, and was later supplemented to include, among other places, a naval air base at Dutch Harbor. The contractor, Siems-Drake Puget Sound Company, as a joint venture of three established construction contractors, was organized for the sole purpose of performing this work. All the land on which the Dutch Harbor air base was constructed was public land reserved for Navy use,

and after October 1941 the entire area was a military reservation from which all nonmilitary personnel and activities were excluded. Construction was at all times under control of the naval Resident Officer in charge.

The construction contract provided that only such recreational and amusement facilities as the Contracting Officer approved should be installed. The purchase and installation of the bowling alleys were approved, as an appropriate means of expediting completion of this essential air base by reducing the inordinately high labor turnover which resulted, in part, from boredom in off-hours. As an economy measure eliminating duplication, the recreational building, in which the alleys were to be installed, was originally intended to serve first as a recreation center for the contractor's workmen, and then as a center for the military personnel stationed at the base. Actually, all civilian workmen were evacuated from the station in December 1942, the construction work was taken over by the Seabees, and these recreational facilities, including the bowling alleys, were used only by military personnel and never by civilians (R. 14–18, 30–31, 45).

5. *Liquid paving asphalt for Cold Bay, Alaska, airport.*—In January 1942, petitioner (and a connecting carrier) transported from Richmond, California to Seattle, Washington, 1259 barrels of liquid paving asphalt, shipped by the Standard Oil

Company of California, consigned to the Civil Aeronautics Administration, Alaska Project Warehouse, Seattle, for export. The asphalt was for use in constructing runways at an airport at Cold Bay, Alaska, under the Civil Aeronautics Administration's program for "Development of Landing Areas for National Defense." This program grew out of several appropriations by the 76th and 77th Congresses for the construction of public airports and landing areas "determined by the administrator, with the approval of a Board composed of the Secretary of War, Secretary of the Navy, and Secretary of Commerce to be necessary for national defense * * *." The Cold Bay airport had been designated in this manner. In the winter of 1941–42 the Army's Alaska Defense Command considered Cold Bay its most important field and urged its speedy completion; on December 15, 1941, General Buckner, Commanding General of the Alaska Defense Command, advised the Civil Aeronautics Administration that the field at Cold Bay was "vital to the immediate defense of key points in Alaska" and he listed it as first in priority in construction of Alaskan airfields. Work began with a civilian contractor, but after one of the runways had been graded the War Department commenced the second runway with troop labor. Late in May, 1942, the Army took over the entire project from the contractor, took possession of the asphalt, expanded the runway

length, and finished the job. Thereafter, the War Department was in full control of the field which became known as Fort Randall. The land on which the field was constructed was public land reserved for the use of the Navy by a 1929 executive order. At the time of the Japanese invasion of the Aleutians, the Cold Bay field played an important part in the defense of Alaska. The unexpected appearance of bombers based at Cold Bay turned back the Japanese attack on Dutch Harbor in the Spring of 1942 (R. 18–21, 32–34, 45).

The District Court held that each of these five shipments was "military or naval property of the United States moving for military or naval and not for civil use," and entitled to land grant rates under Section 321 (a) of the Transportation Act of 1940 (R. 36). Judgment was entered for petitioner in the sum of $319.33 on another claim which the Government did not contest (R. 17–18, 23–24, 36). See footnote 1, *supra*, p. 4. On appeal of petitioner, the Circuit Court of Appeals for the Seventh Circuit affirmed the judgment (R. 49).

SUMMARY OF ARGUMENT

This case involves the application of land-grant railroad rates, under Section 321 (a) of the Transportation Act of 1940, to five shipments of Government property over petitioner's road. Petitioner contends that only property intended for

direct use by military or naval personnel is entitled to reduced rates under Section 321 (a), and that these shipments are therefore excluded. The Government submits that each of these shipments constituted "military or naval property of the United States moving for military or naval and not for civil use," and both lower courts so held. Acceptance of the Government's contention in the companion cases of *United States* v. *Powell, et al.* and *United States* v. *Atlantic Coast Line Railroad Company*, Nos. 56 and 57, would also dispose of this case, but there are narrower grounds for affirming the present judgment. This brief emphasizes these narrower grounds.

1. At the very least, all War and Navy Department property, and Government property shipped at the request of the armed services, is entitled to reduced rates. Historically, all army and navy property, of all types and for all purposes, has been designated as military or naval property or supplies, and there is no justification in the history or terms of Section 321 (a) for shrinking that conventional usage. The statutory exception contained in the words "and not for civil use" merely serves to exclude property moving in connection with the traditional civil functions of the War and Navy Departments, such as the improvement of rivers and harbors, or disaster relief. Here, all property

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moved solely for normal defense purposes; four of the shipments (copper cable, both lots of lumber, bowling alleys) were War and Navy Department property; the asphalt was shipped by the Civil Aeronautics Administration, which was undertaking to construct a military airfield on the Army's behalf and at its request.

2. An additional ground for affirmance is that each of these five shipments clearly moved for a use directly related to preparation for actual combat or to combat itself, and the sphere of combat certainly represents the very core of that which is meant by "military." In two instances (copper cable, lumber), the property was immediately to be used for the production or installation of arms or weapons (degaussing equipment, demountable military bridges); in one case (asphalt), the shipment was for the construction of the essential portion, i. e., the runway, of a combat installation (an airfield); in another (lumber), for the construction of a Government war plant producing a weapon (ammunition); in the fifth (bowling alleys), to sustain the morale of naval personnel stationed at a combat installation and of war workers erecting that airfield for the Navy.

3. Section 321 (a) must be liberally construed to promote the national defense and the prosecution of the war. As the Government has shown in its brief in Nos. 56 and 57, the legislative his-

tory and the historical background of the 1940 statute indicate that Congress intended to do no more than relieve the railroads of their recently enlarged burden of carrying relief and emergency shipments, without hampering the transportation of war or defense materials which were then beginning to move in increasingly significant amounts. Added to the force of this legislative background is the weight of the established rule that grants of public rights and relinquishments of public interests are to be construed liberally in favor of the Government and strictly against the donee.

ARGUMENT

Like *United States* v. *Powell, et al.*, and *United States* v. *Atlantic Coast Line Railroad Company*, Nos. 56 and 57, this Term, this case involves the interpretation of the provision of Section 321 (a) of the Transportation Act of 1940 which entitles "military or naval property of the United States moving for military or naval and not for civil use" to land-grant railroad rates. In Nos. 56 and 57, the government property in question was phosphates lend-leased in 1941 to Great Britain. This case concerns five shipments connected not with lend-lease aid to Allied nations but with the supply of our own armed forces: copper cables for degaussing equipment for Maritime Commission cargo vessels; lumber for construction of a War Department ammunition plant; lumber for

Marine Corps military bridges; bowling alley equipment for recreation of civilian personnel erecting a military air base at Dutch Harbor, Alaska, and later for military personnel stationed there; and liquid paving asphalt for the construction of runways at a Civil Aeronautics Administration airport at Cold Bay, Alaska, to be used by military and naval planes in the defense of the territory.

Petitioner's basic contention is that land-grant rates are available under Section 321 (a) only to articles shipped to or for direct use by military or naval personnel, and not to shipments of construction materials, tools, machinery, or other property for use of contractors, or their employees, in manufacturing articles to be used directly by military or naval personnel (Br. 8–15). It is argued that manufacturing is a civil, not a military or naval activity, and that it is immaterial that the manufactured product may admittedly be military property, since the ingredients and materials used in the manufacture of military property completely lose their identity in the completed article. In other words, petitioner equates "military or naval property" with the finished article being transported for use by a soldier, sailor, or marine.

In this case, as in Nos. 56 and 57, the Government contends that all its property, moving directly in support of the national defense, is entitled to move at reduced rates under Section 321.

(a). We reiterate the general argument made in the two lend-lease cases. Acceptance of that contention would dispose of this case as well. But there are narrower grounds for holding that the present shipments are eligible for land-grant rates, and in this brief we shall emphasize those points. Here, four of the shipments were made, in the course of defense preparations or the actual waging of war, by the armed services—War Department, Navy Department, Marine Corps—and the fifth was a war shipment made by the Civil Aeronautics Administration at the express urging of the War Department. In the four cases involving raw materials or semi-processed parts (copper cable, lumber, asphalt), the property transported by petitioner was directly concerned with the manufacture of combat equipment or installations (degaussing equipment, ammunition, military bridges, airfield); the fifth shipment, of a finished product (bowling outfits), was intended to maintain the morale, first of civilian workmen erecting a wartime military post in remote Alaska, and then of soldiers and sailors to be stationed there. So close and immediate a relation to the military defense or to the military prosecution of the war is in itself a sufficient basis for concluding that the shipments were military or naval property, and that they moved for a military or naval and not for a civil use.

I

WAR OR NAVY DEPARTMENT PROPERTY, AND GOVERNMENT PROPERTY SHIPPED AT THE REQUEST OF THE WAR OR NAVY DEPARTMENTS, IS ENTITLED TO LAND-GRANT RATES

1. We argue, in Nos. 56 and 57 (Brief for the United States, pp. 91–94), that the exception for "military or naval property" does not apply *only* to property shipped by or under the control of the War and Navy Departments. But that qualification, while not necessary, should certainly be sufficient. At the very least, the adjectives "military" and "naval" characterize the national defense activities of the armed services and of the two cabinet departments charged with the main responsibility for the preparation of defense and the conduct of hostilities. Whatever else these terms may encompass, their narrowest traditional definition covers all supplies procured by the armed services. War Department practice has long referred to all of its purchases, of pencils as well as of rifles, as "military supplies." See Military Laws of the United States, 8th Ed., 1939, and Supp. III, 1939–1944, Secs. 1928–1941, 2014–2033.[4] During the war, War Department policy, requir-

[4] The War and Navy Departments, of course, purchase many "civilian type" goods, raw materials, etc. Especially in wartime, vast quantities of materials, indistinguishable in character from those used by the general populace, are bought for the official use of the Army and the Navy and the personal use of its members and of the civilians accompanying them. Purchases for Quartermaster stores and commis-

ing advantage to be taken of land-grant rates in purchasing, made no distinction whatever between "civilian type" goods, actual "munitions," processed parts, or raw materials. The Quartermaster Corps (which purchases clothing, bedding, food, and miscellaneous supplies) applied the same rule as the Ordnance Department (procuring ammunition, tanks, automotive vehicles) and the Corps of Engineers (charged with the construction of government-owned camps and industrial facilities). See War Department Procurement Regulations No. 11, par. 118c, 10 Fed. Reg. Sec. 811.1182c (August 25, 1945, p. 10671). And it is clear that when the War Department proposed to Congress, in 1938, that "military or naval property" continue to be transported at reduced rates, it at least intended to cover all of its own supplies and those of the Navy Department. Hearings before the House Committee on Interstate and Foreign Commerce, 75th Cong., 3d Sess., on H. R. 10620, pp. 16–17.

2. There is no historical warrant for limiting this conventional practice, as petitioner would do, to include only articles actually used by military or naval personnel. Neither the traditional usage

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saries are but a familiar aspect of this practice. Construction materials and equipment are also procured in large quantities for industrial plants, facilities, and posts; all kinds of materials, parts, and machinery are purchased for cost-plus-fixed-fee supply contracts, for furnishing to fixed price contractors, or for use by government-operated plants or arsenals.

of the armed services nor common acceptance supports such a limitation. Weapons or combat tools to be used by servicemen have been called weapons, arms, ammunition, or implements of war; other property physically used or handled by soldiers or sailors (including clothing, food, cots, tents, typewriters, medicines, mosquito netting, plumbing)[5] has not been separated, in statute or departmental practice or current usage, from the general mass of supplies of all kinds procured by the military and naval establishments. And in the light of the Congressional purpose to forward the national defense, there is no justification for creating an artificially narrow conception of "military or naval property" for the single purpose of determining land-grant rate reductions.

3. Nor is the requirement that reduced rates apply to military or naval property "moving for military or naval and not for civil use" reason for limiting coverage to War or Navy Department property used in its present form by military or naval personnel. The narrow answer to this contention is that if it be granted, as we have argued, that "military or naval property" includes, as a minimum, all War and Navy Department supplies (*supra*, pp. 18–20), it can hardly be said that the

[5] In the District Court, petitioner voluntarily dismissed its claim involving plumbing fixtures on the ground that naval personnel were to use them (R. 2, 32). See *supra*, p. 4.

adjectives "military" and "naval" suddenly take on a highly restricted meaning in the succeeding phrase when they modify the noun "use" rather than "property." Assuming that "moving for military or naval and not for civil use" is not solely a legislative definition of "military or naval property," the only construction of these qualifying words which harmonizes with use of the single word "military" is to read the phrase as excluding coverage of War and Navy Department property concerned with the so-called civil responsibilities of those departments, such as the improvement of rivers and harbors, or the government of island territories.[6]

More broadly, we have maintained in our brief in Nos. 56 and 57, pp. 83–87, and as the court below clearly stated (R. 47), the words "moving for military or naval and not for civil use" confirm Congress' intention that the use or purpose to which the property is to be put is the controlling test of its military or naval character. Military property is property which is moving for military and not a civil use. Military or civil use is determined not by the status of the person who will

[6] On this construction, strict limitation of the coverage of Section 321 (a) to War and Navy Department property would suffice to uphold land-grant rates in the instant case, but not in Nos. 56 and 57. In its brief in that case, pp. 91–94, the Government has set forth the reasons why we believe that Section 321 (a) was not intended to restrict land-grant rates to War and Navy Department property.

touch or handle or consume the goods; nor by the type of activity in which the property is immediately to be used (e. g., manufacturing), but by the relation of the shipment to the military aim of the preparation of national defense, or the prosecution of the war. Property moving for a dominantly civil use, such as the War Department's normal civil functions of improving navigation of rivers and harbors, must pay full rates even though destined for handling by soldiers. Cf. *Southern Pacific Co.* v. *United States,* 285 U. S. 240. Conversely, supplies being transported by the service departments in performance of their military functions are entitled to reduced rates even though the persons immediately handling the goods are civilian war workers or technicians. For instance, the use of Army stores to provide sustenance for civilian technicians repairing planes at a China air base cannot be held to be a "civil" as opposed to a "military" use. See *infra,* pp. 40–41.

Likewise, the type of activity occurring at the next stage in the history of the property being transported is no index of the use for which it is moving. The next stage may be manufacture, storage, further transportation, consumption, testing, reconditioning, or repair, but the overriding purpose of all stages in the handling of the material is either the promotion of national defense or the prosecution of the war, on the one hand, or the advancement of a recognized non-

defense "civil" activity on the other. In the context of Section 321 (a), no phase or stage can be said to have an essential character of its own, as civil or military, apart from the dominating purpose for which it is carried on. Petitioner would hardly deny, for example, that a tank returned from a theatre of operations and being transported to a factory for repair or reconditioning before reshipment overseas was moving for military and not for civil use.[7]

4. It is also plain that "military or naval property moving for military or naval and not for civil use" is not restricted to "arms," "munitions of war," or "weapons." In the basic land-grant Act of July 16, 1892, 27 Stat. 174, 180 (see Brief for the United States, Nos. 56 and 57, pp. 54, 88–91), and the succeeding Army appropriations acts for over 30 years, Congress consistently referred

[7] In *Southern Pacific Co.* v. *Defense Supplies Corp.*, 64 F. Supp. 605, 608 (N. D. Calif.), the court held benzol shipped for use in the manufacture of aviation gasoline for the armed forces to be entitled to land-grant rates, saying:

"That the benzol had to be processed and other component material added does not, as contended, detract from its status as military property at the time of transportation. To fix its status according to the standards proposed by plaintiff would involve refinements of evaluation too speculative and too far removed from realities. At what point would its 'military use' become an actuality? When the first drop was mixed with added material? When the manufacturing process was completed? When the first drum of gasoline or first tire started on their way? When the gasoline was syphoned into an airplane tank? Or perhaps not until the airplane had entered upon the performance of its mission?"

to "transportation of troops and *munitions of war and military supplies and property,*"* thus making it clear that, in the terminology Congress has used when legislating in this field, "military property" can and does include materials other than "munitions of war." Several other statutes have carefully used "munitions" or "arms" when Congress has sought to cover only that limited category of military property. The Joint Resolution of March 14, 1912, 37 Stat. 630, prohibited the export of "any arms or munitions of war" to countries in which there was domestic violence. The Neutrality Acts of 1935, 1937, and 1939 all dealt with the exportation of "arms, ammunition, or implements of war" to belligerent countries. Jt. Res. of August 31, 1935, c. 837, 74th Cong., 1st Sess., 49 Stat. 1081; Jt. Res. of May 1, 1937, c. 146, 75th Cong., 1st Sess., 50 Stat. 121; Jt. Res. of November 4, 1939, c. 2, 76th Cong., 2d Sess., 54 Stat. 4. The Act of June 25, 1940, c. 427, 76th Cong., 3d Sess., 54 Stat. 572, 573–574, authorized the Reconstruction Finance Corporation to "purchase and produce equipment, supplies, and machinery, for the manufacture of *arms, ammunition, and implements of war.*" It is only by ignoring the patent difference between the breadth of "military or naval property" and the limited scope of "arms" or "munitions" that petitioner can find any support in an opinion of Attorney

* Italics are supplied in all quotations, unless otherwise expressly indicated

General Palmer, under the 1912 resolution, that an embargo on arms and munitions did not cover machinery for the production of those articles. 32 Op. Atty. Gen. 132 (1920).* Moreover, as the opinions of the Attorney General indicate, these neutrality resolutions must be interpreted to fulfill their purpose, unrelated to the present case, of preventing embroilment in foreign strife without unduly destroying American trade. See 29 Op. Atty. Gen. 375; 30 Op. Atty. Gen. 213, 227; 32 Op. Atty. Gen. 132.

5. Petitioner also cites the detailed wording of the Anti-Sabotage Act, the Embargo Act of July 2, 1940, and the Property Requisitioning Act of October 16, 1941, as demonstrating that Congress intended to use the terms "military or naval property of the United States moving for military or naval and not for civil use" very narrowly. On the contrary, as we point out in Nos. 56 and 57 (Brief for the United States, pp. 67–70, 73, 102–103), the statutes reveal the breadth of Congressional concern with the promotion of national defense, and the more elaborate wordings follow solely from the different purposes and terms of those acts. In amending the Anti-Sabotage Act of 1918, 40 Stat. 533, by the Act of August 21, 1941, 55 Stat. 655, to cover injury to "national-

*Attorney General Palmer stated: "I do not think that machinery to be used in the construction of a plant for the production of arms and munitions of war in Mexico would constitute an exportation of such arms and munitions within the fair construction of the language." 32 Op. Atty. Gen. 132, 134.

defense material," Congress properly saw fit, in a criminal statute, legislatively to define the term "national-defense material," 50 U. S. C., Supp. V, 104, with great particularity. That the land-grant clause of Section 321 (a) has no such detailed legislative definition hardly proves that Congress intended "military or naval property" to exclude the types of property specifically defined as within the concept of "national-defense material." The inference is rather the other way.

The Embargo Act of July 2, 1940, 54 Stat. 712, 50 U. S. C., App., 701, authorized curtailment of exportation of "military *equipment*" or "*munitions*" or "component parts thereof, or machinery, tools, or material, or supplies necessary for the manufacture, servicing, or operation thereof." In addition to the use of the restricted terms "military *equipment*" and "*munitions*," rather than "military *property*" (see *supra*, pp. 23–25), the Embargo Act is distinguished from Section 321 (a) by the fact that it was concerned with possible use of private property for national defense purposes rather than with the owner's present or intended use of the property, while Section 321 (a) deals solely with Government property actually intended by the Government for a particular, i. e., military, purpose. These differences in terminology, and in the ownership and present use of the property, are sufficient reasons for more specific elaboration of the types of property subject to embargo. Similar reasons apply to the equivalent language of the

Property Requisitioning Act of October 16, 1941, 55 Stat. 742, authorizing requisition of any "military or naval *equipment, supplies,* or *munitions,* or component parts thereof, or machinery, tools, or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions." We have pointed out, in our brief in Nos. 56 and 57, pp. 102–103, how liberally Congress viewed even the restricted term "military or naval equipment," as it appears in that statute.

Little aid in construction can be derived from a meticulous, word-by-word comparison of the language of the several national defense acts of 1940 and 1941, without reference to their varying purposes and particular legislative histories. The hazards of drafting largely determined the particular words transplanted from one act to another, or inserted here rather than there. In those days Congress was not too concerned with careful choice of phraseology, but with speedily implementing the attainment of proper levels of preparedness.[16] The significant key is provided

[16] For instance, though the Embargo Act of July 2, 1940, refers only to "*military* equipment" while the Property Requisitioning Act of October 16, 1941, deals with "military or *naval* equipment," Congress can hardly have intended to exclude naval equipment from coverage by the 1940 statute. In fact, the Act of October 10, 1940, 54 Stat. 1090, 50 U. S. C., App. 711, authorizing requisition of equipment or materials embargoed under the Act of July 2, 1940, refers to "military *or* naval equipment * * * the exportation of which has been denied in accordance with the provisions of section 6 of the Act approved July 2, 1940 * * *."

not by the literal language of each statute but by this general aim; of promoting the national defense, which bound and infused the most important legislation of that period.

6. It remains only to point out that four of the shipments involved here (copper cable, both lots of lumber, and the bowling alleys) were the property of the War and Navy Departments, and were shipped for them and at their order. The asphalt was shipped by the Civil Aeronautics Administration, but to complete a project held by the War Department to be not only necessary to national defense and the most important airfield in Alaska but also "vital to the immediate defense of key points" in the territory (R. 34). The Civil Aeronautics Administration was thus undertaking to construct a military airfield on behalf of the Army, and the asphalt being shipped for the runways must be treated exactly as if it were transported by the Army for that purpose.

II

GOVERNMENT PROPERTY BEING SHIPPED FOR USES DIRECTLY RELATED TO COMBAT PREPARATION OR TO ACTUAL COMBAT IS ENTITLED TO MOVE AT LAND-GRANT RATES

An additional ground for supporting the Government's right to transport the five shipments at lower rates is the fact that each moved for a use directly related to preparation for actual combat,

or to combat itself. We need not repeat that, for the reasons stated in our brief in Nos. 56 and 57, we believe that the coverage of the land-grant provision of the Transportation Act is sufficiently broad to include all national defense shipments, and that all narrower interpretations, including that now urged by petitioner, are basically unsound. But even the far more restricted construction of Section 321 (a) suggested in this point requires affirmance of the judgment below.

Traditionally, the clash of armies has been the essential element in war, and the grand aim of warring nations is the defeat of their adversary's armed forces. Combat is quintessentially military, and we would suppose that no one could deny that actual weapons of war, arms, or munitions ultimately intended for use against the enemy's personnel or property constitute military property moving for a military use. Few would cavil at gasoline intended for tanks, lubricating oil for artillery pieces, K-rations for soldiers, or tires for jeeps. But as one moves backward from the actual physical contact of armed forces with the enemy, there will be those who will say that the line between "military" and "non-military" must be sharply drawn at one point or another, and that some fixed mark separates the "military" from the "civil." Petitioner, for instance, insists on placing the boundary line close to the individual soldier and sailor, and classifies only use by him as "mili-

tary." The major difficulty with that view is that Congress established no such specific sign of differentiation in Section 321 (a), either expressly or by implication, and we believe that any hard line of demarcation can be supplied only at the cost of rewriting the statute. In any case, delimitation of the area reserved for reduced land-grant rates, be it sharp or fluid, must take account of Congress' intention in enacting Section 321 (a), the liberality with which the statute must be read, and the words Congress used (see *infra*, pp. 41–46). In the light of these factors, the smallest field in which property may be said to be military and for military use is the area directly related to preparation for combat, or to combat itself. *Cf. Southern Pacific Co.* v. *Defense Supplies Corp.*, 64 F. Supp. 605, 608 (N. D. Calif.). On this interpretation, determination of individual cases will, of course, require the exercise of practical judgment by the railroads and the Government's accounting officers, and perhaps of the courts, but this is a characteristic common to all legislation framed in general terms involving linked chains of causation or relation. Cf. *Gully* v. *First Nat. Bank*, 299 U. S. 109, 117–118; *Santa Cruz Co.* v. *Labor Board*, 303 U. S. 453, 467; *Kirschbaum Co.* v. *Walling*, 316 U. S. 517; *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564.

There can be little doubt that each of the five shipments in this case consisted of property being

transported for a use directly related to combat preparation or to actual combat. In two instances (copper cable, lumber) the shipments were immediately to be used for the production or installation of arms or weapons (degaussing equipment, demountable military bridges), in one (asphalt) for the construction of the essential portion (runway) of a combat installation (airfield), in another (lumber) for the construction of a Government war plant manufacturing a weapon (ammunition), and in the fifth (bowling alleys) to sustain morale of naval personnel stationed at a combat installation and of war workers erecting that airfield under Navy jurisdiction. Fuller discussion will clarify this direct relationship between the five shipments and actual military offense or defense.

1. *Copper cable for degaussing equipment.*—The cable was to be used in the installation, on a Maritime Commission cargo vessel, of degaussing equipment to counteract German magnetic mines (R. 24) which were an important danger to all ships approaching the British Isles. As part of its task of protecting merchant ships, the Navy appears to have considered this equipment as defensively necessary as anti-aircraft batteries or escorts, and accordingly paid for and supervised its acquisition and installation (R. 24–25). Degaussing equipment, in itself, is a defensive weapon of war involving direct contact with the

enemy, like an anti-aircraft gun, and would undoubtedly be entitled to land-grant rates. Cable used in its installation on the ship is hardly less closely related to actual combat. It is an immediate accessory of a weapon, the analogy of gasoline for a bomber, or camouflage paint for a warship. That a Maritime Commission vessel and not a warship carried this degaussing equipment does not, of course, deprive it of its character as a weapon. The purpose was still to foil hostile combat action. Moreover, our merchant marine has a significant place in the defense of the country and the prosecution of war. In the Declaration of Policy of the Merchant Marine Act, 1936, 49 Stat. 1985, 46 U. S. C., Sec. 1101, the national defense takes priority over the development of commerce; ship designs must be submitted to the Navy Department "in order that such vessel shall be suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States Goverment in time of war or national emergency," Merchant Marine Act, 1936, Sec. 501 (b), 46 U. S. C. Sec. 1151 (b); and in time of "national emergency" or when the "security of the national defense" makes it advisable, the Maritime Commission is empowered to requisition or purchase merchant marine vessels, Merchant Marine Act, 1936, Sec. 902, 46 U. S. C., Sec. 1242. During the national defense and war periods, the Commission procured

cargo and transport vessels of all kinds, some of which were later turned over to the Army or Navy, and others carried essential war supplies to our allies and our own troops overseas. Its importance as a war procurement agency was so obvious that Congress included it without question in the first Renegotiation Act (Sixth Supplemental National Defense Appropriation Act, April 28, 1942, 56 Stat. 245).

2. *Lumber for Marine Corps military bridges.*—This shipment of fir lumber went to make up an essential implement of combat, i. e., Marine Corps demountable floating bridges required to move military personnel and vehicles across water barriers (R. 29). It is difficult to imagine any property more closely related to arms or weapons than the materials out of which they are made.

3. *Liquid paving asphalt for Cold Bay airport.*—The asphalt was destined to pave the runways of an Alaskan airfield which had officially been designated by the Secretaries of War, the Navy, and Commerce as "necessary for national defense" and by the Army's Alaskan command as the most important field in the territory and "vital to the immediate defense of key points in Alaska" (R. 33-34). The Cold Bay field did actually play an important part in Alaskan defense; the unexpected appearance of bombers based there turned back the Japanese attack on Dutch Harbor. A more direct combat purpose than the de-

velopment of such an essential air base for the Army in the Alaska theatre of operations can hardly be imagined. Without such bases the air force would be immobilized and air defense or attack nullified. Asphalt for the runways of this field is, therefore, directly related to combat.[11]

4. *Lumber for construction of ammunition plant.*—This shipment moved over petitioner's road for construction, under a War Department cost-plus-fixed-fee construction contract, of a Government-owned ordnance plant producing ammunition for the Army (R. 26–27). These plants, which were demanded by the enormously enlarged need for ammunitions and the inability of private concerns to undertake the necessary production, were Government-owned plants operated by War Department cost-plus-fixed-fee contractors who furnished managerial and engineering services, but assumed little or no risk and put up little or no capital. They were at all times closely supervised by the Ordnance Department, and each plant

[11] Possible anticipated civil use of the airfield in the indefinite future would not disentitle the shipment to reduced rates, any more than the possibility of future sale of all military or naval property (including airfields) to civilians or localities under the Surplus Property Act of 1944 would suffice to deprive all such property of the land-grant privilege. At the time of the hearing in the District Court, the field was an Army installation known as Fort Randall, under the War Department's control (R. 34), and we are not aware of any change in its status.

was an Army installation as well as a factory.[12]

Concededly, ammunition, which is an essential combat weapon, would move at land-grant rates. As we have urged above with regard to lumber for military bridges, materials moving for manufacture of the shells would certainly be held to be directly related to preparation for combat. Materials for construction of a Government-owned, War Department sponsored, ammunition plant are hardly less immediately related. The line of connection between the shipment of lumber and the resulting ammunition is direct and easily visible; the intervening "steps" are few; the indispensability of the shipment to the production of the shells is clear; no other goods were to be produced at the Plant and it was erected in direct response to increased war demands for ammunition.

5. *Bowling alleys.*—This equipment was originally intended to serve a dual purpose, first as a

[12] Construction and operation of Government-owned arsenals and other ordnance plants has long been a recognized military function of the Government. Article I, Section 8, Clause 17 of the Constitution authorizes Congress to exercise exclusive jurisdiction of land acquired for "Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings." Hamilton recommended Government manufacture of all necessary weapons of war in his famous Report of Manufactures. See Earle, *Makers of Modern Strategy* (1943) 132. The system of Government armories and arsenals was early developed in the first years after the adoption of the Constitution. Title 50 of the United States Code, entitled "War," has an entire chapter dealing with "Arsenals, Armories, Arms, and War Material Generally."

means of recreation for employees of the contractor constructing the naval air base at Dutch Harbor, and later as recreation facilities for military and naval personnel occupying the station (R. 31). Actually, all civilian workmen were evacuated before the completion of the building housing the alleys and the facilities were never used by civilians (R. 31).

Thus, the record is clear that the bowling alleys were initially intended for direct use by military and naval personnel, and actually used exclusively by such persons; under petitioner's own theory, they are therefore clearly entitled to land-grant rates. Articles of recreation are, of course, of prime importance in sustaining the morale of soldiers or sailors, especially those stationed at remote posts subject to possible intermittent attacks.[12] Dutch Harbor was such a base, in the active Alaskan theatre of operations, engaged in the servicing of combat planes defending the Aleutians. It is hardly necessary to demonstrate the close and direct relationship of such athletic equipment as bowling alleys to the maintenance of the morale and physical condition of combat forces. Cf. *Standard Oil Company* v. *Johnson*, 316 U. S. 481, 485. Use of the alleys by civilian workers prior to their use by military

[12] Competent military authorities having made this determination, it is not open to attack by petitioner or to review here. Cf. *United States* v. *Bush & Co.*, 310 U. S. 371, 380.

personnel does not detract from this significant military use. Such off-time facilities were essential for military personnel. The adoption of an economy measure eliminating the expenditure of additional funds to provide duplicate recreational facilities (R. 31) should not clothe this shipment with a "civilian" character depriving it of reduced rates.

In our view, use of the bowling alley equipment by the civilian construction workers at Dutch Harbor is also sufficient. Dutch Harbor was an important naval base in Alaska. The work of the construction employees was considered essential by the Navy Department. Remoteness of the station, rough weather, difficult working conditions, and boredom in off-hours created an extraordinary morale problem necessitating special measures to keep the workers satisfied, on the job, and willing to work. The recreation hall and theatre at Dutch Harbor were thus projected and constructed for the primary purpose of expediting completion of the military and naval installations (R. 31).[14]

We recognize that use of the equipment by civilian workers constructing a naval base is the

[14] In the analogous case of the Alaskan Highway, the Committee on Roads of the House of Representatives agreed that no "criticism should accrue to those in charge for providing some form of recreation of this type [moving-picture projection facilities] for these workers in their spare time." H. Rep. No. 1705, 79th Cong., 2d Sess., pp. 53–54.

farthest removed of the five instant shipments from combat use, but in the circumstances we believe that the connection is sufficiently close to warrant land-grant coverage, even on the narrow theory here suggested. Alaska was a theatre of operations and the airfield was certain to be a combat field. Civilians working on such a project have a different status from those working in the United States in war plants, and it is justifiable to treat them as closer to the actual waging of hostilities.[15]

Petitioner's argument that only finished articles are eligible fo rland-grant rates we have already answered in large part. There is no historical justification for segregating finished products

[15] Unlike the Articles of War (Art. 2d, 10 U. S. C. 1473 (d)), before 1943 the Articles for the Government of the Navy (34 U. S. C. 1200 *et seq.*) did not extend to persons accompanying or serving with the Navy. The Act of March 22, 1943, c. 18, 57 Stat. 41, 34 U. S. C. Supp. V, 1201, provided for the extension of the Articles "in time of war or national emergency" to "all persons, other than persons in the military service of the United States, outside the continental limits of the United States accompanying or serving with the United States Navy, the Marine Corps, or the Coast Guard when serving as a part of the Navy, including but not limited to persons employed by the Government directly, or by contractors or subcontractors engaged in naval projects * * * *Provided*, That the jurisdiction herein conferred shall not extend to Alaska * * *, except * * * that part of the Aleutian Islands west of longitude one hundred and seventy-two degrees west." Dutch Harbor is approximately 167° west. Therefore, even if the 1943 amendment had been in effect in 1942, these civilian workers would not have been subject to naval court-martial jurisdiction.

from processed parts and raw materials, and attributing military character only to the former. There is likewise no word in Section 321 (a) indicating any difference in treatment on the basis of state of manufacture alone."[16] Nor is there any functional reason for the separation. If the test is directness of relationship to combat, and it be admitted that more than arms or munitions are covered by the land-grant proviso to Section 321 (a) (*supra*, pp. 23–25), then it follows that many raw materials and parts are as closely connected to hostilities as finished products, and are therefore equally entitled to reduce rate transportation. Petitioner itself would probably not deny coverage to such materials as lumber used to repair a combat bridge across the Rhine, wire for communication repair work in a zone of operations, concrete materials for European airfields, or jeep parts. Moreover, there is often no proper test for determining when a raw material turns into a finished product; the course of processing, packaging, and use may frequently be integral, without significant break. Cf. *Southern Pacific*

[16] Criminal Code, Section 35 (C), 18 U. S. C. 82 forbidding purloining, stealing, or injuring any "*property* of the United States" or "any *property* which has been or is being made, manufactured, or constructed under contract for the War or Navy Departments of the United States" has been expressly held to include not only finished products but also raw and processed materials available for the construction of the finished product. *United States* v. *Anderson*, 45 F. Supp. 943 (S. D. Calif.).

Co. v. *Defense Supplies Corp.*, 64 F. Supp. 605, 608 (N. D. Calif.).

Similar reasons, already discussed in part, *supra*, pp. 21–23, urge rejection of the contention that civilian handling of the goods *ipso facto* divests them of any direct relationship to combat. The closeness of this connection depends on many factors, sometimes including the military status of the persons next concerned with the goods, but mainly stemming from the destined use of the property and the proximity to actual conflict. Under the interpretation of Section 321 (a) adopted in this point of our brief, the important element is the sequence of operations or stages leading to combat, and the status of those carrying on these operations is generally immaterial. Civilian and military personnel are frequently used interchangeably, as the record in the instant case demonstrates. Construction work at Dutch Harbor was commenced by civilian workers and carried on after December 1942 by Seabees, members of the Navy's Construction Battalion (R. 31). Likewise, work at the field at Cold Bay began with civilians and was continued by the War Department with troop labor (R. 34). It is well known that civilian engineers, construction men, technicians, and psychological warfare workers accompanied the Army and the Navy in theatres of operation, and often were subject to military or naval court-martial jurisdiction. Articles of War,

Art. 2d, 10 U. S. C. 1473 (d); Articles for the Government of the Navy, 34 U. S. C., Supp. V, 1201; cf. *Perlstein* v. *United States*, 151 F. 2d 167 (C. C. A. 3), certiorari granted April 22, 1946, Oct. Term 1945, No. 629, dismissed as moot June 10, 1946; *In re Di Bartolo*, 50 F. Supp. 929 (S. D. N. Y.).

It is clear, therefore, that each of the five disputed shipments was directly related to actual combat, or to preparation for combat. It follows that each item of property consisted of "military or naval property of the United States moving for military or naval and not for civil use," and therefore was entitled to reduced land-grant rates.

III

SECTION 321 (A) OF THE TRANSPORTATION ACT OF 1940 MUST BE LIBERALLY CONSTRUCTED TO INCLUDE GOVERNMENT PROPERTY MOVING FOR THE MILITARY PURPOSE OF PROMOTING THE NATIONAL DEFENSE OR THE PROSECUTION OF THE WAR

In the brief in Nos. 56 and 57, we have set forth at some length (pp. 57–79) the Congressional history of Section 321 (a) and of Public Law No. 256, 79th Congress, the Act of December 12, 1945, *infra*, pp. 50–51, prospectively abolishing all land-grant rates. This history shows that Congress sought to relieve the railroads of their recently increased burden of transporting relief and emergency shipments, without interfering with the carriage of

defense materials.' In this way, the Government and the railroads would return to the original purpose of the land-grants to facilitate the national defense."[17] This Congressional aim supports a liberal construction of the land-grant provisions of Section 321 (a) to cover all government property moving in support of the national defense. The statute cannot properly be interpreted if one starts with the premise that Congress intended to limit its continuation of land-grant rates within the narrowest possible compass. Rather, the basic purpose of Congress was to cut off special rates for dominantly nondefense activities, such as those carried on by the P. W. A. and W. P. A., without impairing the defense effort which even in 1940 had become of primary importance. It is this purpose which provides the context in which the words of the act must be read."[18]

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[17] This purpose is expressly emphasized in petitioner's own land-grant act. Section 20 of the Act of July 2, 1864, 13 Stat. 365, 372, listed as one of its objects "to secure the government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes * * *." See footnote 2, *supra*, p. 4.

[18] In the instant case, since petitioner insists that Section 321 (a) continues land-grant rates only for articles shipped to or for use by military or naval personnel, it may be pertinent to note that in the 77th Congress, H. R. 5598, a bill proposing to restrict the deduction authorized by Section 321 (a) to the transportation of "munitions and implements of war and property necessary for the maintenance and subsistence of the armed forces of the United States," was never even acted upon by Committee or House.

Added to the force of the legislative background of Section 321 (a) is the "familiar rule of construction that where a statute operates as a grant of public property to an individual, or the relinquishment of a public interest, and there is doubt as to the meaning of its terms, or as to its general purpose, that construction should be adopted which will support the claim of the government rather than that of the individual." *Slidell* v. *Grandjean*, 111 U. S. 412, 437; see also *Southern Pacific Co.* v. *United States*, 307 U. S. 393, 401; *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 272; *Southern Ry. Co.* v. *United States*, 322 U. S. 72, 76. This rule applied with full effect to the original all-embracing reduced rate conditions of the grant, as embodied in the Act of June 7, 1924 (*Southern Pacific Co.* v. *United States, supra; Southern Ry. Co.* v. *United States, supra*), but petitioner here, as do respondents in Nos. 56 and 57, seem to claim that the Government's partial release of its public right somehow turns the scales wholly in the railroad's favor. Petitioner appears to make a double argument: first, that Section 321 (a) constitutes "remedial" legislation and "exception" from its scope must be strictly construed, and, secondly, that the release filed under Section 321 (b) constituted full "consideration" for the Government's rate concession and resulted in a contract which should

not be interpreted favorably to the Government. Both arguments are erroneous.

1. The first would pervert the doctrine that broad regulatory measures correcting a previous mischief are "remedial," and exceptions from the sweep of the regulatory power should therefore be narrowly limited. Obviously, this rule has not the slightest application to a nonregulatory statutory "exception" retaining for the Government an important economic privilege of great value. Nor should Section 321, which was tacked onto an omnibus transportation measure mainly overhauling the Interstate Commerce Act, be construed as *pari materia* with the regulatory sections of the Act. Cf. *United States* v. *Colorado & N. W. R. Co.*, 157 Fed. 321, 330 (C. C. A. 8), certiorari denied, 209 U. S. 544. Section 321 cannot, in itself, be read as solely concerned with relief of the railroads. The policy of the provision flows as much from the "exception" as from the body of the section. The desire of Congress was to continue land-grant rates for national defense, but not for other governmental purposes. As is suggested by the legislative history summarized in our brief in Nos. 56 and 57, pp. 57–75, it may well have been an accident of draftsmanship and of the legislative course of the statute that Section 321 cast its provision concerning "military or naval property" in the form of an exception rather than as main text.

2. Petitioner's second argument stresses Section 321 (b), requiring a release of all claims to unpatented lands as a condition precedent to the effectiveness of Section 321 (a).[19] The legislative history indicates that Subsection (b) was inserted, over the protests of the railroads, at the urging of various Government agencies, particularly the Department of the Interior, which wholly opposed repeal of the land-grant statutes but felt that, at the very least, the roads should at last put an end to their unresolved public land claims. Hearings before a Subcommittee of the Senate Committee on Interstate Commerce, 76th Cong., 1st Sess., on S. 1915, S. 1990, and S. 2294, pp. 5, 57–63, 64–65, 97, 164–165. At no point was this action by the carriers ever regarded, by them

[19] Petitioner claims that it made a considerable sacrifice in giving its release under Section 321 (b), but it is to be noted that the amount to which it would ultimately be entitled, after trial of the issues remanded by this Court in *United States* v. *Northern Pacific Railway Company*, 311 U. S. 317, was undetermined and might have been reduced to a pittance. Indeed, if the Government had prevailed on all remaining issues, the railroad's recovery might have been entirely nullified and the Government might have secured judgment in its own favor. Moreover, this Court, being equally divided, reserved certain points (311 U. S. at 342) which, if they had been decided for the Government, would have entirely destroyed petitioner's claim; on a second appeal these issues, being reserved, would have been open for decision against petitioner. It should also be noted that figures cited by petitioner for value of the lands, and set forth in the record at R. 23, are petitioner's own valuations.

or anyone else, as a "consideration" or *quid pro quo* for abolition, whole or partial, of land-grant rates. Rather, the releases were "given in pursuance of an apparent Congressional purpose to wipe the slate clean of such claims by any railroad which enjoyed the benefits of the rate concessions made by the Transportation Act of 1940." *Santa Fe Pacific R. Co.* v. *Ickes,* 57 F. Supp. 984, 987 (D. D. C.), reversed on other grounds, 153 F. 2d 305 (App. D. C.), pending on certiorari, Nos. 97 and 98, this Term. Moreover, regardless of the existence of adequate "consideration" and a binding contract, petitioner's argument runs counter to the judicial history of land-grant rates. The railroads' original obligation to haul government property at reduced charges was "consideration," in exactly the same sense, for the initial nineteenth century land-grants, and the same kind of contract between the Government and the railroads resulted (*Burke* v. *Southern Pacific Railroad Company,* 234 U. S. 669, 679; *Louisville & Nashville Railroad Company* v. *United States,* 267 U. S. 395, 402), but the Court has not hesitated to apply the general rule favoring the Government. See cases cited *supra,* p. 43. Section 321 (a) stands on no higher footing.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below is correct and should be affirmed.

GEORGE T. WASHINGTON,
Acting Solicitor General.
JOHN F. SONNETT,
Assistant Attorney General.
ROBERT L. WERNER,
PHILIP ELMAN,
Special Assistants to the Attorney General.
PAUL A. SWEENEY,
OSCAR H. DAVIS,
HUBERT MARGOLIES,
Attorneys.

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APPENDIX

The Transportation Act of September 18, 1940 54 Stat. 898, 49 U. S. C. 65 (a), *et seq.*, provides, in part, as follows:

PART II—RATES ON GOVERNMENT TRAFFIC

Government to Pay Full Rates

SEC. 321 (a). Notwithstanding any other provision of law, but subject to the provisions of sections 1 (7) and 22 of the Interstate Commerce Act, as amended, the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, except that the foregoing provision shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use or to the transportation of members of the military or naval forces of the United States (or of property of such members) when such members are traveling on official duty; * * *.

(b) If any carrier by railroad furnishing such transportation, or any predecessor in interest, shall have received a grant of lands from the United States to aid in the construction of any part of the railroad operated by it, the provisions of law with respect to compensation for such transportation shall continue to apply to such trans-

portation as though subsection (a) of this section had not been enacted until such carrier shall file with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid. Such release must be filed within one year from the date of the enactment of this Act. Nothing in this section shall be construed as requiring any such carrier to reconvey to the United States lands which have been heretofore patented or certified to it, or to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value or as preventing the issuance of patents to lands listed or selected by such carrier, which listing or selection has heretofore been fully and finally approved by the Secretary of the Interior to the extent that the issuance of such patents may be authorized by law.

Deduction of Overpayments

SEC. 322. Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills there-

for, prior to audit or settlement by the General Accounting Office, but the right is hereby reserved to the United States Government to deduct the amount of any overpayment to any such carrier from any amount subsequently found to be due such carrier.

The Act of December 12, 1945, c. 573, 59 Stat. 606, provides:

> * * * That subsection (a) of section 321 of title III, part II, of the Transportation Act of 1940, be, and the same is hereby, amended by striking out the following: "except that the foregoing provision shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use or to the transportation of members of the military or naval forces of the United States (or property of such members) when such members are traveling on official duty;" so that said subsection, as so amended, shall read as follows:
>
> "SEC. 321. (a) Notwithstanding any other provision of law, but subject to the provisions of section 1 (7) and 22 of the Interstate Commerce Act, as amended, the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, and the rate determined by the Interstate Commerce Commission as reasonable therefor shall be paid for the transportation by railroad of the United States mail: *Provided, however,* That any carrier by railroad and the United States may enter into contracts for the transportation of the United States

mail for less than such rate: *Provided further,* That section 3709, Revised Statutes (U. S. C., 1934 edition, title 41, sec. 5), shall not hereafter be construed as requiring advertising for bids in connection with the procurement of transportation services when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed."

SEC. 2. The amendment made by section 1 of this Act shall take effect October 1, 1946: *Provided, however,* That any travel or transportation specifically contracted for prior to such effective date shall be paid for at the rate, fare or charge in effect at the time of entering into such contract of carriage or shipment.

SEC. 3. The Interstate Commerce Commission, in the exercise of its power to prescribe just and reasonable rates, fares, and charges, shall give due consideration to the increased revenues which carriers will receive as a result of the enactment of this Act, so that such increased revenues will be reflected in appropriate readjustments in rates, fares, and charges to shippers.

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SUPREME COURT OF THE UNITED STATES

No. 400.—October Term, 1946.

Northern Pacific Railway Company, Petitioner, v. The United States of America. } On Writ of Certiorari to The United States Circuit Court of Appeals for the Seventh Circuit.

[March 3, 1947.]

Mr. Justice Douglas delivered the opinion of the Court.

This is a companion case to No. 56, *United States* v. *Powell*, and No. 57, *United States* v. *Atlantic Coast Line R. Co.*, decided this day. This case, like those, involves the construction of the provision of § 321 (a) of the Transportation Act of 1940 which entitles "military or naval property of the United States moving for military or naval and not for civil use" to land-grant rates. Petitioner was a land-grant road, 13 Stat. 365, 370, and for years carried government property at land-grant rates. 43 Stat. 477, 486, 10 U. S. C. § 1375. It qualified to receive the higher rates authorized by § 321 (a) of the Transportation Act of 1940 by the timely filing of the required release of land-grant claims pursuant to § 321 (b) of the Act.[1]

The shipments in controversy were made over petitioner's railroad on government bills of lading in 1941, 1942, and 1943. They were admittedly government property at the time of carriage. Petitioner submitted its bills to the Government at the published commercial tariff rates. The United States, claiming that

[1] This release was followed by a settlement of the litigation before this Court in *United States* v. *Northern Pacific R. Co.*, 311 U. S. 317. See *United States* v. *Northern Pacific R. Co.*, 41 F. Supp. 273; S. Doc. No. 48, 77th Cong., 1st Sess.

under § 321 (a) of the Transportation Act each shipment was entitled to move at land-grant rates, deducted the difference between the commercial rates and the land-grant rates. Petitioner thereupon brought this suit under the Tucker Act to recover the deducted sums. The District Court entered judgment for the United States on the claims here involved. 64 F. Supp. 1. The Circuit Court of Appeals affirmed. 156 F. 2d 346. The case is here on certiorari.

The shipments involved five types of property:

Copper cable.—Copper cable was transported to Tacoma, Wash., for use in the installation of degaussing equipment (a defense against magnetic mines) on a cargo vessel being so built that it might readily be converted into a military or naval auxiliary. The work was done by a contractor under contract with the Maritime Commission. The degaussing specifications were furnished by the Navy which also furnished the equipment and bore the cost. The vessel was delivered in 1941 and was operated as directed by the Maritime Commission or the War Shipping Administration. Whether it operated as a cargo vessel or as a military or naval auxiliary does not appear.

Lumber for construction of munitions plant.—In 1942 the Twin Cities Ordnance Plant was being constructed in Minnesota by contractors under the supervision of the Army. The plant was government owned and Army sponsored. Army officers were procuring agents for the lumber used in the construction. Petitioner transported lumber for use in the construction. The plant was completed in 1943 and manufactured ammunition for the armed forces.

Lumber for construction of Marine Corps pontons.—Petitioner in 1943 carried fir lumber to a plant in Minnesota to be treated, kiln dried, milled, and manufactured by a contractor into parts of demountable floating bridges required to move military personnel and war vehicles

across water barriers. The construction was under a contract with the Marine Corps. The manufactured product was either shipped overseas in connection with military or naval operations or was used in connection with the training of combat engineers.

Bowling alleys for Dutch Harbor.—Petitioner moved bowling alley equipment to Seattle, Washington, for reshipment to the Naval Air Base, Dutch Harbor, Alaska. The Navy had entered into a contract for the construction of an air base at Dutch Harbor on public land reserved for Navy use. The purchase and installation of the bowling alleys were pursuant to that contract and were approved by the Navy officer who had supervision and control of the construction program. The recreational facilities, which included the bowling alleys, were planned for initial use by the civilian construction crew and then, when construction work was ended, by the Navy. But in fact they were used only by members of the armed forces.

Liquid paving asphalt for Cold Bay, Alaska, airport.—In 1942 petitioner moved liquid paving asphalt to Seattle, Washington, for reshipment to Alaska. The asphalt was for use in constructing runways at an airport at Cold Bay under a program of the Civil Aeronautics Authority approved by a joint cabinet board as being necessary for the national defense. Work was commenced by a civilian contractor and, after the shipment had moved, was taken over by the Army which thereafter had full control of the field.

In four of the above instances the property was consigned to an army or navy officer; in the fifth, the shipment of liquid paving asphalt, the Civil Aeronautics Authority was the consignee. And as we have said, the property in each case was at the time of shipment property of the United States. The question remains whether within the meaning of § 321 (a) it was "military or naval" property and, if so, whether it was "moving for military or naval" use.

There is a suggestion that since the shipment of asphalt was to a civilian agency, the Civil Aeronautics Authority, it was not "military or naval" property. The theory is that "military or naval" property means only property shipped by or under control of the army or navy.

We see no merit in that suggestion. Section 321 (a) makes no reference to specific agencies or departments of government. The fact that the War or Navy Department does the procurement might, of course, carry special weight or be decisive in close cases. But it is well known that procurement of military supplies or war material is often handled by agencies other than the War and Navy Departments. Procurement of cargo and transport vessels by the Maritime Commission is an outstanding example. See Merchant Marine Act of 1936, § 902, 49 Stat. 2015–2016, as amended, 46 U. S. C. § 1242. And shortly before the Transportation Act of 1940 was enacted, Congress by the Act of June 25, 1940, 54 Stat. 572, 573–574, authorized the Reconstruction Finance Corporation to create subsidiary corporations to purchase and produce equipment, supplies, and machinery for the manufacture of arms, ammunition, and implements of war. And later that Act was amended to enable those corporations to purchase or produce any supply or article necessary for the national defense or war effort. Act of June 10, 1941, 55 Stat. 248, 249. As we have held in *United States* v. *Powell*, *supra*, not every purchase which furthers the national defense is for "military or naval" use within the meaning of § 321 (a). But property may fall within that category though it is procured by departments other than War or Navy.

It is also suggested that the property covered by the exception in § 321 (a) is confined to property for ultimate use directly by the armed forces. Under that view materails shipped for the construction of vessels for the Maritime Commission and used to service troops at home or abroad would not be "military or naval" property. We

likewise reject that argument. Civilian agencies may service the armed forces or act as adjuncts to them. The Maritime Commission is a good example. An army and navy on foreign shores or in foreign waters cannot live and fight without a supply fleet in their support. The agency, whether civil or military, which performs that function is serving the armed forces. The property which it employs in that service is military or naval property, serving a military or naval function.

But petitioner contends that, even if that is true, the construction of vessels or other military equipment or supplies is in a different category. It argues that none of the articles shipped in the present case was military or naval, since they were not furnished to the armed forces for their use. They were supplied, so the argument runs, for manufacture and construction which are civilian pursuits and which were here in fact performed by civilian contractors. Only the completed product, not the component elements, was, in that view, for military or naval use.

Military or naval property may move for civil use, as where army or navy surplus supplies are shipped for sale to the public. But in general the use to which the property is to be put is the controlling test of its military or naval character. Pencils as well as rifles may be military property. Indeed, the nature of modern war, its multifarious aspects, the requirements of the men and women who constitute the armed forces and their adjuncts, give military or naval property such a broad sweep as to include almost any type of property. More than articles actually used by military or naval personnel in combat are included. Military or naval use includes all property consumed by the armed forces or by their adjuncts, all property which they use to further their projects, all property which serves their many needs or wants in training or preparation for war, in combat, in maintaining them at home or abroad, in

their occupation after victory is won. It is the relation of the shipment to the military or naval effort that is controlling under § 321 (a). The property in question may have to be reconditioned, repaired, processed or treated in some other way before it serves their needs. But that does not detract from its status as military or naval property. *Southern Pacific Co.* v. *Defense Supplies Corp.*, 64 F. Supp. 605. Within the meaning of § 321 (a) an intermediate manufacturing phase cannot be said to have an essential "civil" aspect, when the products or articles involved are destined to serve military or naval needs. It is the dominant purpose for which the manufacturing or processing activity is carried on that is controlling.

Measured by that test, there can be no doubt that the five types of property involved in the present litigation were "military or naval" property of the United States "moving for military or naval and not for civil use" within the meaning of § 321 (a). The lumber for the pontons, the asphalt for the airfield, the lumber for the ammunition plant were used in Army or Navy projects directly related to combat preparation or to actual combat. Copper cable for the cargo vessel, though farther removed from that category, was well within the definition of "military or naval" property. It, too, was a defensive weapon. Beyond that it was purchased by the Navy Department and consigned to one of its officers. It was supplied pursuant to Navy specifications; and the ship on which it was installed was being prepared for possible ultimate use by the Navy. The bowling alleys were also well within the statutory classification. The needs of the armed forces plainly include recreational facilities. The morale and physical condition of combat forces are as important to the successful prosecution of a war as their equipment. The fact that the bowling alleys were planned for initial use of civilian workers makes no difference. It is the nature of the work being done, not the status of the person handling

the materials, that is decisive. Supplies to maintain civilians repairing army or navy planes is a case in point. The dominant purpose of the project in this case was the same whether civilians or military or navy personnel did the actual work.

Petitioner contends that if Congress intended to include in "military or naval property" articles for use in the manufacture of implements of war, it would have said so. It seeks support for that position from other Congressional enactments under which such materials were excluded because not mentioned [2] or were included by specific reference.[3] We can find, however, little support for petitioner's contention in that argument. Apart from the different wording of those acts and the different ends they served, there is one decisive and controlling circumstance. We have more in § 321 (a) than a declaration that "military or naval" property is entitled to land-grant rates. Congress went further and drew the line between property

[2] The embargo against "arms or munitions of war" authorized by the Joint Resolution of March 14, 1912 (see 37 Stat. 1733), was held not to include machinery for the construction of a munitions plant. 32 Op. Atty. Gen. 132.

[3] Thus the Act of July 2, 1940, 54 Stat. 712, 714, 50 U. S. C. App. § 701, authorized the President to prohibit or curtail "the exportation of any military equipment or munitions, or component parts thereof, or machinery, tools, or material, or supplies necessary for the manufacture, servicing, or operation thereof . . ."

The Act of November 30, 1940, 54 Stat. 1220, amending the Anti-Sabotage Act, defined "national-defense material" as including "arms, armament, ammunition, livestock, stores of clothing, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof," which the United States intended to use in the national defense.

The Act of October 16, 1941, 55 Stat. 742, authorized the President to requisition the following types of property for the defense of the United States: "military or naval equipment, supplies, or munitions, or component parts thereof, or machinery, tools, or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions . . ."

moving for "military or naval" use and property moving for "civil" use. As we have said, the controlling test is the use to which the property is dedicated or devoted. The fact that Congress did not define what was a "military or naval" use as distinguished from a "civil" use is unimportant. The classification made by Congress under this Act, unlike that made under the acts on which petitioner relies, was all inclusive not partial. What is military or naval is contrasted to what is civil. The normal connotation of one serves to delimit or expand the other. It is in that context that "military or naval" must be construed.

Petitioner also contends that § 321 (a) is a remedial enactment which should be liberally construed so as to permit no exception which is not required. Cf. *Piedmont & N. Ry. Co.* v. *Interstate Commerce Commission*, 286 U. S. 299, 311–312. But it is a familiar rule that where there is any doubt as to the meaning of a statute which "operates as a grant of public property to an individual, or the relinquishment of a public interest," the doubt should be resolved in favor of the Government and against the private claimant. *Slidell* v. *Grandjean*, 111 U. S. 412, 437. See *Southern Ry. Co.* v. *United States*, 322 U. S. 72, 76. That rule has been applied in construing the reduced rate conditions of the land-grant legislation. *Southern Pacific Co.* v. *United States*, 307 U. S. 393, 401; *Southern Ry. Co.* v. *United States*, *supra*. That principle is applicable here where the Congress, by writing into § 321 (a) an exception, retained for the United States an economic privilege of great value. The fact that the railroads, including petitioner, filed releases of their land-grant claims in order to obtain the benefits of § 321 (a) is now relied upon as constituting full consideration for the rate concession. It is accordingly argued that the railroads made a contract with the United States which should be generously construed. Cf. *Russell* v. *Sebastian*, 233 U. S. 195, 205.

The original land-grant resulted in a contract. *Burke* v. *Southern Pacific R. Co.*, 234 U. S. 669, 680. Yet, as we have seen, they were nonetheless public grants strictly construed against the grantee. The present Act, though passed in the interests of the railroads, was in essence merely a continuation of land-grant rates in a narrower category. Therefore, it, too, must be construed like any other public grant.

Affirmed.